Code. But negligent driving is not an offence for which a warrant can issue in the first instance.

Apparently the accused was arrested in pursuance of this direction and was released on bail.

The following day he appeared before the same Magistrate on a complaint by the Police Inspector who had assisted at the Death Inquiry on the following charge :—

"That you on 9.4.56 at or about 7.30 p.m. at 18½ mile Bagan Datoh Road, Teluk Anson, being the driver of motor van PA. 3090, did drive the said motor van in a negligent manner to wit, by knocking into a cyclist, and that you thereby committed an offence under section 4(2) and punishable under section 13 of the Motor Vehicles (Driving Offences) Proclamation G.N. 151/46."

The Magistrate instead of adjourning the matter for trial before another Magistrate proceeded to take his plea and, perhaps not unnaturally in the light of what had happened the previous day, the accused pleaded guilty. On that he was convicted and fined $75 and had his driving licence endorsed.

So far as the trial is concerned it may be that nothing was done that was technically wrong and clearly, on the face of it at any rate, nothing was done to which the accused himself did not consent. Nevertheless, I am satisfied that the whole thing amounted to a miscarriage of justice. The previous day the Magistrate had announced that he had come to a judicial finding that what the accused had done amounted to causing death by a negligent act and ordered his arrest. In the circumstances it would have taken a man of extraordinary hardihood and resolution however conscious he might have been of his innocence to do otherwise than plead guilty when the following morning he found himself in the dock before the same Magistrate on a less serious charge in respect of the same accident. That consideration alone would justify me in saying that he did not have a fair trial.

Let me make it clear that there is no room for any shadow of a suggestion that the Magistrate was in any way consciously unfair. The accused came from Penang and it may well be that the Magistrate felt he was shewing him consideration in enabling him to have his troubles over and done with and to be on his way home. All the same, to quote the classical words of Lord Hewart C.J. in *R. v. Sussex Justices*[1], it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done". And it cannot be said that justice is manifestly and undoubtedly seen to be done when an accused person appears for trial before a Magistrate who has already judicially announced his belief in his guilt.

There is, too, the further consideration that the charge was of an extremely objectionable and misleading nature, one of a sort I have criticised on previous occasions but which still seems to be in use.

In a criminal charge of negligent driving it is not either usual nor necessary to set out particulars of the alleged negligence. It is, however, grossly misleading to say "You did drive the said motor van in a negligent manner, to wit, by knocking into a cyclist". 'Knocking into' a cyclist is in itself a perfectly colourless action from the legal point of view. It may be wrong or it may be excusable. It all depends on the circumstances of the case. The point is that it does not of itself constitute negligence and the fact of alleging it is calculated to mislead the accused person by detracting his attention from the true nature of the allegation against him which is that he drove his vehicle negligently. It is the negligent driving and not the 'knocking into' a cyclist that constitutes the offence which the accused is called upon to admit or not admit and which if he does not admit it the prosecution is called upon to prove.

The conviction is set aside. The fine paid will be refunded and the endorsement on the accused's licence cancelled. There will be an order for a re-trial on such charge as the Public Prosecutor may direct and that re-trial will be before another Magistrate.

Re-trial ordered.

PUBLIC PROSECUTOR v LIM CHAI SENG & ORS.

[Cr. R. J. (Thomson J.) August 31, 1956]

[Ipoh — Criminal Revision Nos. 20, 21, 22, 23 & 24 of 1956]

Criminal Law — Charge of "failing" to attend a Magistrate's Court in answer to a summons — Criminal Procedure Code (Cap. 6), s. 359 — Whether trial before the same Magistrate before whom accused failed to attend permissible — Charge sheet.

In each of these cases the accused was charged with "failing" to attend the Magistrate's Court in answer to a summons which was alleged to be a contravention of section 174 of the Penal Code. In each case the accused pleaded guilty and, although no conviction appeared on any of the records, was fined. It appeared that the Magistrate before whom the accused failed to attend was in each case the same Magistrate who later tried them on these charges.

Held on revision: (1) "failing" to attend a Magistrate's Court in answer to a summons is not an offence. The offence is to "intentionally omit" to attend; (2) the trial of the accused in these cases was in direct contravention of section 359 of the Criminal Procedure Code (Cap. 6), the provisions of which are mandatory, and therefore the Magistrate in question had no jurisdiction.

Observations on particulars required to be entered on the Charge Sheet.

CRIMINAL REVISION.

Thomson J. : — The facts in each of these five cases are the same. In each of them the accused was charged with "failing" to attend the Magistrate's Court at Teluk Anson in answer to a summons which was alleged to be a contravention of section 174 of the Penal Code. In each case the accused pleaded guilty and, although no conviction appears on any of the records, was fined.

If these persons were convicted the convictions cannot stand.

In the first place "failing" to attend a Magistrate's Court in answer to a summons is not an offence. The offence is to "intentionally omit" to attend, which is a different thing.

There is, however, a much more fundamental defect in the proceedings. It would appear that the Magistrate before whom the accused failed to attend was in each case the same Magistrate who later tried them on the present charges. This was in direct contravention of section 359 of the Criminal Procedure Code, the provisions of which are mandatory. The Magistrate in question had thus no jurisdiction.

In the circumstances the convictions (if any) are quashed and the fines will be refunded.

Before departing from the cases I would point out that in each case a large number of particulars required to be entered on the Charge Sheet have not been entered, the most glaring of these omissions being any note of the Magistrate's finding. These Charge Sheets were introduced some years ago to ensure that all necessary particulars relating to criminal proceedings are recorded but this result which is a necessary one will clearly not be attained if Magistrates feel themselves at liberty to disregard the requirements of the Sheets.

Order accordingly.

CHAN PEAN LEON v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) July 6, 1956]

[Ipoh — Criminal Appeal No. 38 of 1956]

Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in carrying on a public lottery — Possession of lottery tickets — Meaning of possession.

In this case the accused was convicted on a charge of assisting in carrying on a public lottery in contravention of section 4(1)(c) of the Common Gaming Houses Ordinance. The facts in the case were as follows: On March 10, 1956 the police raided a shop in Teluk Anson which belongs to a partnership of which the appellant is a member and in connection with which he acts as cashier. The appellant was found sitting at a small counter at the back of the shop. In front of him was a small note-book containing 50 sheets of smooth paper and 50 sheets of rough paper bound alternately, the sheets of smooth paper being perforated near the binding so as to permit easy removal. Nothing was written on any of these sheets. In a waste-paper basket beside the appellant was found a day book of the type commonly used in shops which was completely filled with entries relating to trade transactions which had clearly been transferred to other books of account and inside this was found a booklet similar to the one lying in front of the appellant. From this booklet 17 of the smooth sheets were missing and the rough sheets corresponding to these missing sheets were inscribed with certain characters through the medium of carbon paper of which a sheet was found in the book. These characters were stated by an expert to relate to characters lottery. The appellant in his evidence said that a number of people besides himself had access to the waste-paper basket and that the table in front of him was used by other people.

Held: (1) it was clear that the Magistrate in this case had not applied his mind to the question of whether the circumstances clearly showed that the accused had the intention of dealing with the counterfoils found in the account book in the waste-paper basket as if they were his own, and that he had any *animus possidendi* in relation to them; (2) on the facts it did not appear that the Magistrate could have come to the conclusion that possession was made out against the accused had he directed himself to the question and therefore the conviction must be set aside.

To establish "possession" for the purposes of criminal law two separate questions are involved. The first is whether the accused party was in possession of the article in question and the second, by reason of the application of the maxim *actus non facit reum nisi mens sit rea*, is whether he had knowledge of the nature of the thing possessed.

Cases referred to:—

(1) *Public Prosecutor v. Lee Fook* (1932) M.L.J. 127; (1931-32) F.M.S.L.R. 289.

(2) *Toh Ah Lam & Mak Thim v. R.* (1949) M.L.J. 54.

(3) *Lee Boon Gan v. R.* (1954) M.L.J. 103.

MAGISTRATE'S CRIMINAL APPEAL.

A. S. Yeo for the appellant.

Abdul Aziz (Federal Counsel) for the respondent.

Thomson J. : — This is an appeal from the Magistrate's Court at Teluk Anson. The appellant was convicted of assisting in carrying on a public lottery in contravention of section 4(1)(c) of the Common Gaming Houses Ordinance and was fined $1,500 or six months imprisonment in default of payment. Against that conviction and sentence he has now appealed.

There has at no time been any material dispute as to the facts of the case.

During the morning of March 10th, 1956, police officers entered a shop in Teluk Anson which belongs to a partnership of which the appellant is a member and in connection with which he acts as cashier. The appellant was found sitting at a small counter at the back of the shop. In front of him was a small note-book containing 50 sheets of smooth paper and 50 sheets